

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

DONALD ROBERT BROSKA
STEPHANIE LYNN BROSKA

CASE NO. 95-62001

Debtors

ROBERT M. WEICHERT
SUSAN M. WEICHERT

Plaintiffs

vs.

ADV. PRO. NO. 95-70193

DONALD ROBERT BROSKA, 108-38-0197
aka DON BROSKA, aka D.R. BROSKA
STEPHANIE LYNN BROSKA, 097-42-6114
aka S.L. BROSKA

Defendants

MEMORANDUM-DECISION AND ORDER

The "Plaintiffs", Robert M. and Susan M. Weichert, commenced the within adversary proceeding by the filing of a complaint on September 5, 1995, seeking to determine the dischargeability of a debt under §523(a)(2)(A)(B); (4) or (6) of the Bankruptcy Code (11 U.S.C. §§101-1330)("Code") in the voluntary Chapter 7 case commenced by Donald Robert Broska and Stephanie Lynn Broska, the "Debtors/Defendants" herein. The matter of instant concern deals with the Plaintiffs' demand for a jury trial.

JURISDICTIONAL STATEMENT

The Court has jurisdiction over the parties and subject

matter of this core proceeding pursuant to 28 U.S.C. §§1334 and 157(a), 157(b)(1), (b)(2)(A) and (B).

DISCUSSION

The Seventh Amendment preserves the right to trial by jury for suits at common law, but does not apply to suits in equity. See Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 2790 (1989); Germain v. Connecticut Nat'l Bank, 988 F.2d 1323, 1328 (2d Cir. 1993) (citing Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446-47 (1830)).

The test for determining whether a party is entitled to a trial by jury requires a court to "determine first whether the action would have been deemed legal or equitable in 18th century England [prior to the merger of the courts of law and equity], and second whether the remedy sought is legal or equitable in nature. The court must balance the two, giving greater weight to the latter." Germain v. Connecticut Nat'l Bank, supra, at 1328 (citing Granfinanciera, supra, 109 S.Ct. at 2790); In re Perry, 111 B.R. 861, 863 (Bankr. C.D.Cal. 1990).

Because dischargeability proceedings and objections to discharge are characteristically equitable in nature, see Germain v. Connecticut Nat'l Bank, supra, at 1330; In re Schmid, 54 B.R. 520, 521 (Bankr. E.D.Pa. 1985) (citing Local Loan v. Hunt, 292 U.S. 234, 54 S.Ct. 695 (1934)), the Plaintiff is not entitled to a jury trial on the within complaint. See In re Devitt, 126 B.R. 212, 215 (Bankr. D.Md. 1991) (citing In re Perry, supra, 111 B.R. 861 and In

re Hooper, 112 B.R. 1009 (9th Cir. BAP 1990)); In re Fineberg, 170 B.R. 276, 280 (E.D.Pa. 1994). Accordingly, Plaintiff's demand for same is hereby denied.

IT IS SO ORDERED

Dated at Utica, New York
this 15th day of April 1996

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge